



NEW JERSEY STATE SOCIETY OF ANESTHESIOLOGISTS

The NJSSA Pulse

June/July 2015



FROM THE PRESIDENT PETER GOLDZWEIG, DO

As we start the summer we continue to remain very active society. The hot topic the past couple of months was out of network (OON). John Azzariti (NJSSA VP) and AJ Sabath, (NJSSA Lobbyist) working with the Medical Society of NJ were able to prevent a potentially damaging OON bill from leaving committee. There are several states with recently adopted policies including New York, Texas and Illinois. Not only are we working locally, we are working with the ASA led by Jason Hansen.

ICD-10 is coming on October 1, 2015. We do not expect any more delays. Please feel free to visit: <http://www.cms.gov/Medicare/Coding/icd10/> to gather additional information. The ASA will also be providing material for its members. Please remember to check with your institution, as many are requiring basic training.

Most people have heard about the case where a patient sued the anesthesiologist who mocked him while sedated. If you have not then here is a link:

<http://www.cbsnews.com/news/patient-sues-anesthesiologist-who-mocked-him-while-sedated/>

Please let this be a reminder, our patients deserve our respect and you never know who is listening. Enjoy the summer.

FROM THE STATEHOUSE
ADVOCACY & MANAGEMENT GROUP
AJ SABATH, LYNN HAYNES AND CHARLES BURTON



CHRISTIE SIGNS FY 16 BUDGET, USES RED PEN TO VETO DEMOCRATS' TAXES AND EXPANDS EARNED INCOME TAX CREDIT

On Friday, June 26, 2015 New Jersey Governor Chris Christie approved the Fiscal Year 2016 budget which takes effect on July 1, 2015. The Governor used his line-item veto power to eliminate more than \$1.6 billion from the FY 2016 budget which was approved by the Democratic-controlled Legislature bringing the final budget closer to the \$33.8 billion plan he proposed earlier this year. The Governor vetoed an income tax increase, a corporate business tax surcharge and reduced the contribution to the Public Employee pension system to \$1.3 billion. The Governor Conditionally Vetoed legislation that would have instituted a millionaires' tax instead seeking an increase in the Earned Income Tax Credit (EITC). On Monday, June 29, 2015 the Legislature formally approved the Governor's Recommendations and approved an increase in the State EITC from 20% to 30% of federal earned income tax credit for taxable years 2015 and thereafter.

OUT-OF-NETWORK UPDATE

After months of behind the scenes wrangling and upon completion of two lengthy "discussion only" legislative hearings in the State Senate and General Assembly, the New Jersey Legislature has recessed until fall before enacting any significant Out-of-Network (OON) reform. As you may recall there was a "discussion only" hearing in the Assembly Financial Institutions Committee in early June and a subsequent attempt to pass the bill out of the Senate Commerce Committee which failed. Amendments were made public but not adopted that scaled back the legislation, but not enough to limit the tremendous opposition from the provider community. As a result of the continued opposition, the Senate Commerce Committee ultimately only discussed the bill and did not vote to release it because there were not enough votes to pass it out of committee.

We have been working independently meeting with legislators, key staff and other pertinent officials in the Governor's office. We have also been attending fundraisers on your behalf and continue to communicate your concerns with the OON bill to important decision makers. We have been working with a larger coalition of providers including hospitals and the Medical Society of New Jersey as well as a host of other surgical specialties and physician organizations that work in a hospital setting and/or Ambulatory Surgery Centers. While we have been successful in temporarily beating back this issue independently as well as with the Access to Care Coalition, we do expect OON to resurface in late fall after the November elections.

To that end, we plan to work over the summer on identifying specific systems in effect in other states that offer a workable solution to the problem. We cannot escape shortcomings in the current system in New Jersey that permits egregious and excessive surprise medical bills to patients. We believe that implementing strong disclosure and transparency requirements on hospitals, doctors and insurance companies will solve much of the surprise billing problem. This coupled with a dispute resolution system that can truly weed out the egregious billing outliers will also help to address the issue. At all costs we must protect our ability to negotiate fair contracts with insurance carriers by preserving out-of-network billing in New Jersey.

After the July 4th holiday we will be circling the wagons with our provider allies to continue discussions about a summer strategy and our next steps as a group. We will also begin implementing on your behalf a strategy to further educate legislators and staff on any new developments or existing concerns. We will also continue to work to replenish our political war chest to enable us to maintain an active presence at political fundraisers.

THREE CHRISTIE CABINET MEMBERS STEP DOWN FROM KEY GOVERNMENT POSTS

Three Christie Administration cabinet members have recently announced their resignation; State Treasurer Andrew Sidamon-Eristoff, Health Commissioner Mary O'Dowd and Banking and Insurance Commissioner Ken Kobylowski will leave the administration over the next several weeks. Deputy Treasurer Robert A. Romano will become Acting Treasurer. Catherine Bennett, the Department of Health's Director of Policy and Strategic Planning, will become acting commissioner. Governor Christie will nominate Richard J. Badolato, a partner at the law firm of Connell Foley in Roseland, to replace Kobylowski as Commissioner of Banking and Insurance.

Governor Christie Launches White House Bid

Governor Chris Christie made his long-anticipated dive into the 2016 Republican presidential waters becoming the 14th major Republican to enter the race. He joins five other sitting or former governors, with two others waiting in the wings. Governor Christie is expected to continue in office as New Jersey's Chief Executive for the remainder of his term which expires at the end of 2016. While the New Jersey Governor is expected to have an intensive travel schedule to campaign in early primary States, Lieutenant Governor Kim Guadagno will fill in his place during any absences.

LEGAL REPORT

JOHN FANBURG, ESQ.

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FEDERAL DEVELOPMENTS

OIG Issues Special Fraud Alert re: Physician Compensation Agreements

On June 9, 2015, the U.S. Department of Health & Human Services, Office of Inspector General ("OIG") released a special Fraud Alert entitled "Physician Compensation Arrangements May Result in Significant Liability."

In the Fraud Alert, the OIG cautioned physicians who enter into compensation arrangements, such as medical directorships, that such compensation arrangements must reflect the fair market value for bona fide services that the physician actually provides. The OIG is concerned about such compensation arrangements because, even though many are legitimate, the federal anti-kickback statute may be violated if even one purpose of the arrangement is to compensate a physician for past or future referrals of federal health care program business.

The OIG announced in the Fraud Alert that it had recently reached settlements with twelve individual physicians who entered into what the OIG considered to be questionable medical directorship and office staff arrangements. The OIG determined that the payments under the arrangements did not reflect the fair market value of the services performed and that the physicians did not actually provide the services called for under the agreements. The OIG determined that the physicians were an integral part of a larger scheme relating to improper referrals and were subject to liability under the Civil Monetary Penalties Law.

The OIG ended the Fraud Alert by requesting individuals who had information about physicians or other individuals engaging in similar behavior, to contact the OIG Hotline to report that information.

Other Legal News of Interest

\$8.5 Million Verdict Awarded Against Concierge Medicine Firm for Malpractice of Contracting Physician

In what is believed to be the first malpractice verdict ever returned against a concierge management firm, a Palm Beach County, Florida jury awarded \$8.5 million to the estate of a plan member in an action against MDVIP Inc., the nation's largest concierge medicine practice.

The jury found that Charles D. Metzger, M.D. qualified as an agent of MDVIP at the time that he treated the decedent, and that negligence liability passed via the agency relationship to MDVIP. The plaintiff claimed that a blood clot in the patient's leg was misdiagnosed multiple times by Dr. Metzger and other MDVIP-affiliated staff, resulting in a worsening condition that eventually required leg amputation. The patient later died of leukemia.

Industry observers indicate the ruling is significant and may cause concierge companies to more stringently review the credentials of physicians seeking to become members of their networks. The Florida district court ruling controverts the assumption of concierge companies that they are immune from liability for malpractice because they merely act as brokers between doctors and patients. MDVIP representatives have indicated that they intend to appeal the verdict.

The American Society of Anesthesiologists will be hosting a quality management program for physician anesthesiologists (private practice and academics), quality managers, and directors of quality improvement. The **ASA® Quality Meeting** will take place November 21-22 at the Loews Chicago O'Hare Hotel, Rosemont, IL.

ASA members can take advantage of early bird registration now through July 6, 2015. Please visit the website for more information on this quality management program at www.asahq.org/aqm.